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10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
12

13  
14 **MARK ANDREWS,**

15 **PLAINTIFF,**

16 **v.**

17 **CALIFORNIA DEPARTMENT OF**  
18 **CONSUMER AFFAIRS; SONOMA**  
19 **COUNTY DEPARTMENT OF CHILD**  
20 **SUPPORT SERVICES; CALIFORNIA**  
21 **DEPARTMENT OF MOTOR VEHICLES;**  
22 **CALIFORNIA BUREAU OF**  
23 **AUTOMOTIVE REPAIR; LOUISE**  
24 **BAYLESS FIGHTMASTER, IN HER**  
25 **PERSONAL AND OFFICIAL CAPACITY AS THE**  
26 **COMMISSIONER APPOINTED BY THE STATE**  
27 **COURT JUDGES; KIRK GORMAN, IN HIS**  
28 **PERSONAL AND OFFICIAL CAPACITY AS THE**  
**ATTORNEY FOR THE DEPARTMENT OF CHILD**  
**SUPPORT SERVICES; KATHY SIMON, IN HER**  
**PERSONAL AND OFFICIAL CAPACITY AS CASE**  
**WORKER FOR CHILD SUPPORT SERVICES;**  
**DOES 1 THROUGH 20,**

**DEFENDANTS.**

Case No: 3:17-cv-00252-WHO

**DEFENDANTS CALIFORNIA  
DEPARTMENT OF MOTOR  
VEHICLES'; CALIFORNIA  
DEPARTMENT OF CONSUMER  
AFFAIRS, INCLUDING THE BUREAU  
OF AUTOMOTIVE REPAIRS' REPLY  
TO PLAINTIFF'S OPPOSITION TO  
MOTION TO DISMISS**

Date: August 23, 2017  
Time: 2:00 PM  
Courtroom: 2, 17<sup>th</sup> Floor  
Judge: Hon. William H. Orrick  
Trial Date: None Set  
Action Filed: January 17, 2017

## INTRODUCTION

Defendant California Department of Consumer Affairs (including its Bureau of Automotive Repairs) ("DCA") and Defendant California Department of Motor Vehicles ("DMV") (collectively "Defendants") hereby file this Reply to Plaintiff Mark Andrew's ("Plaintiff") late-filed opposition to their motions to dismiss the First Amended Complaint ("FAC").

Originally, the DCA and the DMV filed individual motions to dismiss the FAC pursuant to Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P. 12(b)(6). The DCA filed its motion on June 7, 2017, because it was served before the DMV. (DCA's Mot. to Dismiss, 06/07/2017, ECF No. 21.) The DMV filed its motion on June 22, 2017. (DMV's Mot. to Dismiss, 06/22/2017, ECF No. 23.) However, the facts, law, and arguments involved in the DCA's and DMV's motions to dismiss are virtually identical. Therefore, the Defendants will reply jointly to the Plaintiff's late-filed opposition.

The Plaintiff's opposition fails to successfully controvert the well-established law that bars his claims. The fatal defects in the FAC cannot be cured through amendment. The court lacks subject matter jurisdiction over the Plaintiff's claims due to a lack of a case or controversy between Plaintiff and moving defendants. Additionally, the Plaintiff cannot state a claim for relief against the Defendants as a matter of law based on the alleged facts in this case. As a result, the Defendants respectfully request that the court dismiss the FAC with prejudice.

### **I. THE FAC CANNOT BE AMENDED TO STATE A CLAIM FOR RELIEF AGAINST THE DEFENDANTS AS A MATTER OF LAW**

#### **A. The Plaintiff's Arguments Fail to Controvert the Authorities Cited in Defendants' Motions to Dismiss**

The Plaintiff's scattered opposition makes numerous erroneous arguments that show his claims should not survive the Defendants' motions to dismiss. Moreover, the opposition fails to show that the Defendants denied the Plaintiff his constitutional rights during the state court action.

Defendants' motions establish that the *Rooker-Feldman* doctrine deprives the court of subject matter jurisdiction because Plaintiff is simply seeking to re-litigate issues decided in a state-court proceeding. *Noel v. Hall*, 341 F.3d 1148, 1163-1164 (9th Cir. 2003). In response,

1 Plaintiff contends he did not have an opportunity to argue his claims in state court. (Plaintiff's  
2 Oppo. to Mot. Dismiss, 07/19/2017, ECF No. 28, P. 6, ln. 11-12.) However, the FAC admits that  
3 Plaintiff contested his license suspensions as unlawful during the state-court action, and the issue  
4 was resolved when defendant Fightmaster denied his motion for return of his licenses. (FAC, ¶¶  
5 21-22, 29.) Plainly, Plaintiff's attempt to re-litigate the lawfulness of his license suspensions in  
6 the present action is barred by the *Rooker-Feldman* doctrine.

7 Plaintiff's next contention, that the Defendants caused his injuries, has no evidentiary basis.  
8 As a result, this court lacks subject matter jurisdiction because there is no Article III case or  
9 controversy in this case. (Plaintiff's Oppo. to Mot. Dismiss, 07/19/2017, ECF No. 30, p. 6, ln.  
10 16-23.) The FAC contains no allegations demonstrating a connection between the Defendants'  
11 acts or omissions and the alleged denial of a fair hearing to review Plaintiff's license suspensions.  
12 (FAC, ¶¶ 19-33.) This is intuitively accurate, as Defendants were not parties to the state court  
13 action. Moreover, Defendants' issuance of notices of license suspension to Plaintiff was required  
14 under state law and not due to any discretionary decision by Defendants. Cal. Fam. Code § 17520  
15 (e)(3). Given Defendants' limited role in the license suspensions, Defendants' actions cannot be  
16 connected to the alleged denial of any "fair hearing", and thus the Plaintiff lacks Article III  
17 standing to sue Defendants. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-560 (1992)  
18 (plaintiff's allegations must detail a causal connection between an alleged injury and defendant's  
19 acts or omissions to maintain a case or controversy).

20 Plaintiff further states that his claims for due process constitutional violations can proceed  
21 independently of 42 U.S.C. § 1983. (Plaintiff's Oppo. to Mot. Dismiss, 07/19/2017, ECF No. 30,  
22 p. 6, ln. 24-27.) This argument lacks merit because 42 U.S.C. § 1983 constitutes the exclusive  
23 platform for asserting federal constitutional claims against state actors. Where Congress has  
24 created an adequate remedial mechanism for constitutional violations, additional remedies should  
25 not be created. *Schweiker v. Chilicky*, 487 U.S. 412, 423 (1988) (no *Bivens* remedy for improper  
26 denial of Social Security disability benefits). For this reason, the Ninth Circuit has held that a  
27 plaintiff may not sue a state defendant directly under the federal constitution where § 1983  
28 provides a remedy, even if that remedy is not available to the plaintiff. *Martinez v. City of Los*

1 *Angeles*, 141 F.3d 1373, 1382 (1998) (Mexican national can not assert *Bivens* theory against state  
2 actors to avoid express limitation within § 1983); see also *Azul–Pacífico, Inc. v. City of Los*  
3 *Angeles*, 973 F.2d 704, 705 (9th Cir.1992); *Bretz v. Kelman*, 722 F.2d 503, 504 n. 1 (9th  
4 Cir.1983), *vacated on other grounds*, 773 F.2d 1026 (1985) (en banc). When analyzed under  
5 U.S.C. § 1983, Plaintiff’s constitutional claim against the state defendants fails because a state  
6 and its agencies are not persons under § 1983. *Will v. Michigan Dept. of State Police*, 491 U.S.  
7 58, 71 (1989); see also *Williamson v. Indiana University*, 345 F.3d 459, 463 (7th Cir. 2003); (“No  
8 cognizable claim under the civil rights statutes can be brought against a state, because it is not a  
9 “person” for purposes of those provisions”). The holding in *Will* establishes that Defendants are  
10 not subject to suit under § 1983. *Howlett v. Rose*, 496 U.S. 356, 365 (1990); *Gilbreath v. Cutter*  
11 *Biological, Inc.*, 931 F.2d 1320, 1327 (9th Cir. 1991) (“‘arms of the State’ ... are not ‘persons’  
12 under section 1983.”). As a result, the Plaintiff’s allegations against the Defendants have no  
13 merit.

14 Plaintiff’s opposition next states that the Eleventh Amendment does not bar his suit, as the  
15 FAC includes claims against individuals. Again, this point is considerably off the mark. The  
16 individual defendants named in the FAC, are not related to the DCA or DMV. (FAC, ¶¶ 1-8.)

17 More relevantly, the Eleventh Amendment bars suits against state agencies in federal  
18 courts. *Mitchell v. Los Angeles, Community College Dist.*, 861 F.2d 198, 201 (9th Cir. 1988)  
19 (citing *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984)), *cert. denied*,  
20 490 U.S. 1081 (1989). Recently, Supreme Court decisions have stressed that the Eleventh  
21 Amendment protects the “integrity” and “dignity” of the states. *Hess v. Port Auth. Trans-Hudson*  
22 *Corp.*, 513 U.S. 30, 39 (1994); *Fed. Maritime Comm’n v. South Carolina State Ports Authority*,  
23 535 U.S. 743, 759-60 (2002). Here, the relief sought by the Plaintiff is expressly barred by the  
24 Eleventh Amendment, and the claims within the FAC have no merit against the Defendants.

25 Plaintiff’s opposition also argues that the statute of limitations on his claims have not  
26 expired, and thus the doctrines of res judicata and collateral estoppel somehow do not bar his suit.  
27 (Plaintiff’s Oppo. to Mot. Dismiss, 07/19/2017, ECF No. 29, p. 8, ln. 8-12.) This contention  
28 lacks merit because the doctrines of res judicata and collateral estoppel are not affected by the

1 statute of limitations of the prior claims. *McClain v. Apodaca*, 793 F.2d 1031, 1032-1034 (9th  
2 Cir. 1994) (doctrines of res judicata and collateral estoppel bar subsequent litigation of a  
3 particular issue, but do not involve consideration of the statute of limitations). Moreover,  
4 Plaintiff ignores that his ability to challenge his license suspensions is barred due to his guilty  
5 plea to contempt charges regarding the failure to pay child support. *Haupt v. Dillard*, 17 F.3d  
6 285, 288, (9th Cir. 1994) (suit alleging denial of a fair trial estopped where issue of probable  
7 cause decided during the allegedly violative criminal action). Plaintiff's present claim, which  
8 alleges that he was prevented from raising the legality of his licenses suspensions in state court, is  
9 the same claim he extinguished when he pleaded guilty to the contempt charges. (FAC, ¶¶ 20,  
10 27.) The doctrines of res judicata and collateral estoppel thus prevent the Plaintiff from  
11 collaterally attacking his state-court guilty plea in this court.

12 The opposition also contends that the applicable statute of limitations is three years,  
13 pursuant to Cal. Code Civ. Proc. § 335, based on a theory of fraud on the court. (Plaintiff's Oppo.  
14 to Mot. Dismiss, 07/19/2017, ECF No. 30, p. 7, ln. 9-13.) This point, while irrelevant, is also an  
15 admission by plaintiff that his allegations of fraud were not made against the Defendants, who  
16 were not participants in the state-court proceeding. (FAC, ¶¶ 27-28.) The only allegations against  
17 the Defendants describe their issuance of mandatory notices to Plaintiff during the summer of  
18 2013, informing the Plaintiff of his impending license suspension in June and July 2013,  
19 "pursuant to the FC §17520 and DCSS order". (FAC, ¶¶ 16-17.) Therefore, even assuming a  
20 three-year statute of limitations was somehow applicable in this case, any claims that arose out of  
21 events in 2013 cannot be presented in this lawsuit, as this action was not filed until January 17,  
22 2017. *Jones v. Bock*, 549 U.S. 199, 215 (2007) (if a complaint's allegations show that relief is  
23 barred by the applicable statute of limitations, the complaint is subject to dismissal for failure to  
24 state a claim).

25 Lastly, Plaintiff's opposition fails to demonstrate how the statutorily provided court-review  
26 process under California Family Code section 17520 is inadequate as a matter of law. The facts  
27 in this case indicate that Plaintiff received all the due process to which he was entitled under the  
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1 California Family Code and the federal constitution. As a result, the FAC should be dismissed  
2 under Fed. R. Civ. P. 12(b)(6).

3 **B. The Court's Lack of Subject Matter Jurisdiction and the Plaintiff's Failure**  
4 **to State a Claim for Relief Are Not Excused Due to Plaintiff's Pro Se**  
5 **Status**

6 The Plaintiff's complaint is held to a less strict standard because he is unrepresented.  
7 *Estelle v. Gamble*, 429 U.S. 97, 106, 97 (1976). However, the court should dismiss an  
8 unrepresented party's complaint when, as here, it is "beyond doubt that the plaintiff can prove no  
9 set of facts in support of his claim which would entitle him to relief." *Id.*, quoting *Conley v.*  
10 *Gibson*, 355 U.S. 41, 45–46 (1957).

11 With regard to unrepresented parties, the court "has a duty to ensure that pro se litigants do  
12 not lose their right to a hearing on the merits of their claim due to ignorance of technical  
13 procedural requirements." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).  
14 However, "*pro se* litigants in an ordinary civil case should not be treated more favorably than  
15 parties with attorneys of record." *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986).  
16 Moreover, there is no general excuse for a pro se plaintiff's missteps in a civil case. *McNeil v.*  
17 *United States*, 508 U.S. 106, 113 (1993).

18 Here, the central issue is whether Plaintiff is entitled to leave to amend the FAC. Given  
19 that the FAC's deficiencies amount to much more than a failure to comply with minor, technical  
20 procedural requirements, leave should not be granted. Rather, the FAC fails to comply with  
21 significant, substantive legal doctrines that: (1) establish that the court lacks subject matter  
22 jurisdiction over Plaintiff's claim; and (2) prevent the Plaintiff from stating a claim for relief. As  
23 discussed above, the FAC cannot be amended to cure its fatal defects because the Plaintiff's  
24 claims do not have any merit. In these circumstances, allowing an amendment would be a futile  
25 act and prejudice the Defendants by forcing them to defend invalid claims. *Leadsinger, Inc. v.*  
26 *BMG Music Publ'g*, 512 F.3d 522, 532 (9th Cir. 2008) (leave to amend properly denied to prevent  
27 undue prejudice or where futile). As a result, the court should dismiss this case with prejudice  
28 against the Defendants.



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## CONCLUSION

Clearly, the plaintiff can prove no set of facts in support of his claim that would entitle him to relief against the Defendants. For the forgoing reason, the DCA and the DMV respectfully request that this Court dismiss this action against them in its entirety without leave to amend.

Dated: July 31, 2017

Respectfully Submitted,

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